

CONTRACT

DRAFT RA9

THIS AGREEMENT, dated for convenience this 5th day of July, 2005, between the CITY OF MILPITAS, a municipal corporation in the County of Santa Clara, State of California (hereinafter called "CITY") and All Temp Engineering, Inc. 331 Commercial Street, San Jose, CA 95112, (hereinafter called "CONTRACTOR"):

NOW, THEREFORE, the parties agree:

ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said CITY, and under the conditions expressed in two bonds hereunto annexed, the said CONTRACTOR agrees with the said CITY, at his/her own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the plans and specifications hereinafter mentioned, in a good, workmanlike and substantial manner, all the work and improvements described, mentioned and set forth in those plans and specifications on file in the Office of the City Engineer, entitled:

"Contract Documents and Specifications for"
Police Evidence Freezer
Project No. 8159

which said plan and specifications and all the documents therein contained are hereby specially referred to and by such reference made part of this contract.

ARTICLE II: CONTRACTOR'S ACCEPTANCE

The CONTRACTOR agrees to receive and accept the prices, shown on **Exhibit "A"**, which is attached hereto and incorporated by reference herewith, as full compensation for furnishing all materials and equipment and for doing all the work contemplated and embraced in this Agreement; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City Council of the CITY OF MILPITAS, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of the work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, plans and specifications, and the requirements of the City Engineer. **The total compensation under this Agreement as shown on Exhibit "A" includes the Base Total, and shall not exceed Ninety Four Thousand Seven Hundred Eighty Three Dollars and Ninety Nine cents (\$94,783.99).**

ARTICLE III: ACCEPTANCE BY CITY

The said CITY hereby promises and agrees with said CONTRACTOR to employ, and does hereby employ the said CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE IV: COMPLETION OF AGREEMENT

Reference is made to Section D-01 "Prosecution of the Work and Time of Completion", of the Special Conditions included within the specifications of this contract. Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed before **the expiration of 90 Calendar Days**.

ARTICLE V: HOURS OF LABOR

The CONTRACTOR shall forfeit, as a penalty, to the CITY, Twenty-Five Dollars (\$25) or maximum amount required by law [check amount] for each workman employed in the execution of the contract by him or by any subcontractor for each calendar day during which any workman is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810-1815 inclusive of the Labor Code and all amendments thereto.

ARTICLE VI: APPRENTICES

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code governing the employment of apprentices by the CONTRACTOR or any subcontractor under him. CONTRACTOR and any of his/her subcontractors shall comply with the requirements of said sections of the Labor Code; CONTRACTOR shall have full responsibility for compliance with the said sections regardless of any other contractual or employment relationships allege to exist.

ARTICLE VII: TRAVEL AND SUBSISTENCE PAY

Each worker needed to execute the work set forth in this Agreement shall be paid travel and subsistence pay by the CONTRACTOR as required in Section 1773.8 of the Labor Code.

ARTICLE VIII: DISCRIMINATION PROHIBITED

The CONTRACTOR shall not refuse to accept otherwise qualified employees for employment for any work set forth in this Agreement solely on the grounds of race, religion, creed, color, national origin, ancestry, physical handicap, marital status, sexual preference, political affiliation, or age of such employee.

ARTICLE IX: INSURANCE

A. Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

B. Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the

subcontractor has been so obtained and approved. The CONTRACTOR shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of his employees and the employees of any subcontractor under him not protected by such compensation laws.

The CONTRACTOR shall furnish satisfactory proof, by certificate or otherwise as may be required, that it has taken out public liability and property damage insurance with insurance carriers satisfactory to the CITY, and in such form as shall be satisfactory to the CITY to protect said CONTRACTOR and said CITY as an additional insured against loss from liability imposed by law from damages on account of bodily injury, including death resulting there from, suffered or alleged to have been suffered by any person or persons other than employees, resulting directly or indirectly from the performance or execution of this contract or any subcontract thereunder, and also to protect said CONTRACTOR and said CITY as an additional insured against loss from liability imposed by law for damage to any property caused directly or indirectly by the performance or execution of this contract or any subcontract thereunder, which insurance shall also cover accidents arising out of the use and operation of automobiles and trucks. Said policy shall include, but not be limited to coverage for the omissions and supervisory acts of the CITY, its officers and employees.

Said policy shall also provide that the coverage afforded thereby to CITY, its officers, engineer and consultants, and employees, is primary coverage to the full limit of liability stated in the Declaration, and if the City, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and that CITY, its officers and employees are not precluded from claims thereunder against other insured parties.

C. Comprehensive General and Automobile Liability:

The CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this Agreement comprehensive general and automobile liability insurance protecting Contractor in the amounts of coverage of not less than the limits shown below. Such insurance shall name the City of Milpitas as defined above, and as additional insured. Coverage shall be in accordance with the limits specified above and the provisions indicated herein. Claims-made policies are not acceptable. When umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance shall not be canceled or materially altered to reduce coverage without giving CITY at least thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of CONTRACTOR to notify CITY of such change or cancellation.

General & Automobile Liability -----	\$1,000,000 per person \$1,000,000 for each occurrence
Property Damage -----	\$1,000,000 for each occurrence \$1,000,000 aggregate

Said policies shall have a non-cancellation clause providing that thirty (30) days written notice shall be given the CITY prior to such cancellation. Where the work includes a structure or structures subject to loss or damage by fire, the CONTRACTOR shall maintain or cause to be maintained fire insurance sufficient to protect against such loss or damage in full until the work is accepted by the CITY. Nothing herein contained shall be construed as limiting in any way the extent to which the CONTRACTOR may be held responsible for the payment of damages to persons or property resulting from his or her operations or operations of any subcontractor under him or her.

Proof of all such insurance shall be given by filing certificates of such insurance with the City Engineer prior to

execution of the contract by the CITY.

D. Certificates of Insurance with Endorsements:

The CONTRACTOR shall file the required original Certificate of Insurance with endorsements prior to the commencement of the work or event; it shall be subject to CITY's approval and shall clearly state:

1. Policy number; name of insurance company; name, address and telephone number of agent or authorized representative; name, address and telephone number of insured; Project name and number; policy expiration date; and specific coverage amounts;
2. That thirty (30) days cancellation notice, unqualified as to the acceptance of liability for failure to notify City; and
3. The CONTRACTOR's insurance is primary.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention City Engineer, 455 East Calaveras Boulevard, Milpitas California, 95035.

E. Workers Compensation Insurance:

The CONTRACTOR agrees to obtain and maintain statutory workers compensation and employers liability in an amount not less than One Million Dollars (\$1,000,000) and furnish City with a certificate showing proof of such coverage.

F. Deductibles, Self-Insured Retentions, and Proof of Insurance:

Prior to commencing any work under this Agreement, deductibles and self-insured retentions acceptable to CITY must be stated on Certificates of Insurance, and the Certificate of Insurance must be approved by CITY.

G. Absence of Insurance:

If the CONTRACTOR allows the insurance to laps, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

H. Insurance Companies:

Insurance provided pursuant to this Contract must be from insurance companies admitted in California and rated at least A in Best's Insurance Guide; or such other insurance companies as are acceptable to CITY in its sole and unfettered decision.

ARTICLE X: HOLD HARMLESS

The CONTRACTOR hereby agrees to and shall hold CITY, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort whatsoever, including, but not limited to, any liabilities, claims, losses, or expenses in any

manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by CONTRACTOR or CONTRACTOR's subcontractors, agents, or employee operations under this Agreement, whether such operations by CONTRACTOR or by any of CONTRACTOR's subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for CONTRACTOR or any of CONTRACTOR's subcontractors during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONTRACTOR for default of this Agreement or arising from the sole active negligence or willful misconduct of the CITY. The City Council may retain so much of the money due to the CONTRACTOR as shall be reasonably necessary to protect the City, until disposition has been made of such suits or claims for damages as aforesaid.

The CONTRACTOR agrees to and shall pay CITY's cost of defense (or, at the sole option of the CITY, CONTRACTOR shall defend with counsel approved by the City Attorney) and indemnify CITY and its elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement (exclusive of any such action brought by CONTRACTOR), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONTRACTOR is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONTRACTOR'S obligation to indemnify, defend and save harmless the CITY, as provided for hereinabove, shall in no manner be affected by the fact that the CITY had not received the notice of cancellation prior to the date of such accident or incident.

ARTICLE XI: BONDING REQUIREMENT

The CONTRACTOR agrees to post a Faithful Performance Bond and payment bond for Labor and Materials, or other guarantees, in the required amounts upon bond forms provided by the CITY, guarantying the performance of the terms of this Agreement.

ARTICLE XII: WARRANTY BOND

The CONTRACTOR further agrees to post a warranty bond in the amount equal to at least 10 percent (10%) of the total value of the entire work prior to CITY's acceptance of the project. The warranty bond shall remain in effect for a period of one (1) year after CITY's final acceptance of the work to guarantee the repair and/or replacement of the defective materials provided and/or workmanship performed under this contract.

ARTICLE XIII: MAINTENANCE AND GUARANTY

The CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the CITY may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a one (1)-year period subsequent to the date of final acceptance.

This Article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer give a guaranty for a longer period, nor does it limit the other remedies of the CITY in respect to a latent defect, fraud or implied warranties. CONTRACTOR shall furnish the CITY all appropriate guaranties or warranty certificates upon completion of the project.

ARTICLE XIV: SHORING FOR TRENCHES

If the depth of the trench is five feet (5') or more, then Section 5-1.02A, "TRENCH EXCAVATION SAFETY PLANS", of the most current Caltrans Standard Specifications shall be applicable. If the contract specifies an expenditure of Twenty-Five Thousand Dollars (\$25,000) or greater for trenching, and if the depth of the trench is five feet (5') or more, then Section 6705 of the Labor Code shall also be applicable.

ARTICLE XV: INTERPRETATION OF CONTRACT

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE XVI: AMENDMENTS

This Contract may be amended from time to time as necessary by formal and written amendment executed by the City Manager or his designee and principal acting on behalf of the CONTRACTOR.

ARTICLE XVII: CHANGES OR EXTRA WORK

The CONTRACTOR acknowledges that in conformance with the Contract Documents, any changes or extra work must be authorized in writing by the City Engineer prior to the CONTRACTOR performing said work. CONTRACTOR further acknowledges that it is solely responsible for obtaining written authorization from the CITY and that it shall not be compensated for any additional work performed without said written authorization. Oral authorization shall not be sufficient to bind the CITY absent specific written authorization.

ARTICLE XVIII MEDIATION

All claims for \$375,000 and less shall be arbitrated pursuant to the provisions of Public Contract Code Section 20104 et seq.

ARTICLE XIX CERTIFIED PAYROLL

Refer to the Contract Documents regarding requirements for Certified Payroll. All wages paid by the CONTRACTOR and its subcontractors shall be the current applicable prevailing wage rates, and as specified in project Contract Documents.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

Approved as to Form:

By: _____
City Attorney

By: _____
City Manager

Approved as to Sufficiency:

By: _____
City Engineer

By: _____
Contractor

Since 1985


**All Temp
Engineering, Inc.**

Specialist in Environmental Simulation Equipment

Proposal

October 7th, 2005

City Of Milpitas

455 E Calaveras Blvd.

Milpitas, CA 95035

Proposal Number: JMP71905.1689R1

Attention: Jorge Bermudez

All Temp Engineering Inc. will provide the labor and materials to perform the following scope of work for City of Milpitas, Police Department: Biological Evidence Freezer to be located: Milpitas Police Station 1275 North Milpitas Boulevard, Milpitas, CA 95035. Sub contractors to provide their own Warranties and Proof of Insurance.

-20°F Walk-In Long Term Biological Evidence Storage Freezer **Project #8159**

Item	Qty	Description
A	1	BIOLOGICAL EVIDENCE FREEZER 17'L x 17'W x 8'H with Temperature Performance of -20°F to +4°F with ±5°F Tolerance <ul style="list-style-type: none"> 4" Wall and Ceiling panels; Foamed in place standard Polyurethane Interior Ceiling: .040 Mill finish smooth aluminum, white finish, and Interior walls .040 Mill finish smooth aluminum. Exterior exposed area shall be 26 gage stucco embossed Galvalume finish, and Unexposed exterior 26 gage Galvalume embossed finish Floor: Interior floor 1/8th inch Aluminum "Diamond Plated" raised surface metal sheet with 3 1/2" thick insulation with 1" plywood reinforced underlayment.
B	1	Door: 48" x 80" Right hand hinged out-swing, low temp rated, heavy duty, with heater and 14" x 14" observation window
C	0	Platform, exterior 5' x 6'
D	3	Lighting: High Output fluorescent Vaporlume fixtures, with low-temperature remote mounted ballasts, And Emergency (remote) Battery back-up Exit light
E	6	Bulbs: for Vaporlume fixtures, 4 foot, low temp
F	1	Pressure Relief Port: Standard 3"
G	2	Interior & Exterior Weatherproof Light Switch with Covers Installed near door.
H	1	Condenser: 5.5 HP, 208/230 3 Phase, R404A Refrigerant
I	1	Evaporators, Low Profile: 120 Single Phase, R404A Refrigerant, 14K Btu
J	1	Digital Controller with Thermometer & Alarm
K	14	Metro MaxQ Shelving independent mount (6-5', & 8-4')
L	2 sets	Vibration isolators on mechanical systems
M	1	4 hours of Operation/Maintenance Training
N	1	Structural & Electrical Eng'g Stamps (Seismic) & Drawings
O		All Union Labor for Walk-In
P	1	Temporary Barrier-Using Plastic perforated fence material

Since 1985



All Temp Engineering, Inc.

Specialist in Environmental Simulation Equipment

Provisions included:

- Provide installation for the above listed equipment
- Unit to be installed to meet seismic requirements, and submit *Seismic design certified by a Calif. Licensed Civil or Structural Engineer*
- Electrical shall be done by Summers & Sons, and shall be brought up to the mechanical section & to the cold room for final hook-ups which shall be then done by All Temp Eng.
- Provide interior (box) electrical work and final connections By ATEI
- Provide and install all related Mechanical equipment
- Provide Corrosion Resistant nameplates, in full detail: *Manufacturer Name, Model, & Serial No's with all pertinent data for servicing and maintenance where applicable*
- Provide systems start up and 2 week successful test run for final acceptance, as verified with separate 14 day Chart Recorder for verification.
- Provide Operations Training for up to 4 people (per session) and/or 4 hours for Owner and Maintenance personnel
- Submit 6 Sets of all equipment submittals and shop drawings
- Provide 5 sets of O & M Manuals
- Provide "As built" Drawings
- Fire stop shall be done by *All Purpose Fire Protection, Inc. (incl)*
- Temporary perforated plastic fence barrier in evidence room

***Proposal lump sum of
\$94,783.99***

Exclusions

This quote does not include the following:
Cement/masonry work
Temporary Power

Equipment rental or any item not
expressly stated

Warranty

Standard 5- year warranty on panels, with 1 year on door, 1 year on refrigeration equipment and 1 year labor on installation performed by All Temp Engineering Inc. Warranty shall be performed during normal business hours. We warrant our workmanship on work we perform to be defect free for 60 days from completion. Materials carry manufacturer and/or supplier's warranty and are not otherwise warranted. All other warranties, including without limitation those of merchantability and fitness for a specific purpose are expressly disclaimed. Warranty liability is not to exceed the total amount of this service order. Warranty work shall be performed during regular working hours.

Extended Warranty available 2, 3 and 5 years for service, labor and compressor coverage.

Payment: Net 30 from INVOICE DATE.



All Temp Engineering, Inc.

Specialist in Environmental Simulation Equipment

Cancellation Notice:

The customer may cancel the job at anytime from the initial receipt of the PO until the final sign off of the work being performed. A cancellation letter on the customers' letterhead is required stating the cancellation notice and the reason for canceling the scheduled work, and is subject to the following:

- ##** A minimum of 20% penalty charge of total Estimated contracted job cost will be assessed if work has not been started at the time of the receipt of the written cancellation letter.
- ##** If the job has begun before receipt of the cancellation letter, all chargeable labor and material costs will be assessed to the customer plus the minimum 20% penalty charge.
- ##** A 35% restocking charge for all parts, materials, components returned to suppliers will apply regardless of notification date

Permits:

All permits that may be required for any job are solely the responsibility of the customer, unless otherwise stated

Out-of-Scope Charges:

All Temp Engineering is providing this Estimate on the basis of the information that was provided at the time of the Estimate. If at anytime during the work in progress, additional previously unidentified costs are incurred or required to complete the work, we will immediately notify the customer, and a signature by an authorized agent will be necessary on the change order showing, and accepting the additional costs that will be required before proceeding.

Chamber Preparation: If applicable

All Temp Engineering is not responsible for any equipment and hardware removal that is attached to or is inside the chamber. It is recommended that Customer remove all test equipment and hardware from the chamber that is being scheduled for that workday. A clean access to all sides of the chamber is required and all work performed will be cleaned up at the end of the job each day by All Temp Engineering technicians.

Limited Warranty: (unless otherwise stated)

We warrant our workmanship on work we perform to be defect free for 60 days from completion. Materials carry manufacturer and/or supplier's warranty and are not otherwise warranted. All other warranties, including without limitation those of merchantability and fitness for a specific purpose are expressly disclaimed. Warranty liability is not to exceed the total amount of this service order. Warranty work shall be performed during regular working hours

Items not covered under warranty: (unless otherwise stated)

- Any expendable fluids (refrigerants, oils additives etc.) replaced or lost during a warranty repair.
- Re-calibration of equipment if any, should the tamper-proof seal be damaged or broken.
- Any servicing of equipment by anyone other than employees of All Temp Engineering, Inc. during the warranty period, which directly affects the work in question, shall void said warranty.
- Any damages caused by fire, earthquake, flood, power surges, and/or acts of God.

Thank you for the opportunity to be of service. We are confident you will find that your experience with our company will be of the highest quality.

Sincerely,

Liz Dain

National Sales Manager/Business Relations
All Temp Engineering, Inc.
331 Commercial Street
San Jose, California
95112

800-973-3331, 408-298-7981, 408-298-7990(F) 831-970-5341(C)

www.alltempeng.com liz@alltempeng.com

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